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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 19)

No. 79-1714

JIMMIE ALEXANDER,

Petitioner and Appellant,

vs.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

BRIEF FOR RESPONDENTS IN OPPOSITION

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JURISDICTION

As appellant challenges the constitutionality of a civil service rule of the County of Los Angeles, California, and claims that the rule violates his constitutional right to retain his County civil service employment, his petition for a writ of certiorari meets the literal requirements of paragraph (3) of Section 1257 of Title 28 of the United States Code. Respondent will attempt to demonstrate, however, that the questions presented -- especially in view

of the facts of the case -- are not of such substance or importance as to merit the granting of a discretionary hearing by this Honorable Court.

QUESTIONS PRESENTED

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1. Is Section 33 of the Los Angeles County Administrative Code (County Ordinance No. 4099) unconstitutional, either generally or as applied to appellant?

2. Is there evidence that appellant was a victim of racial discrimination?

3. Has appellant been subjected to cruel or unusual punishment?

ORDINANCE INVOLVED

Section 33 of the Los Angeles County Administrative Code reads in full as follows:

"A county officer or employee resigns in any of the following ways:

"(a) A county officer or employee who without prior authorization is absent or fails to discharge his regularly assigned duties for either three (3) consecutive regular working days or for two (2) consecutive regularly scheduled on-duty shifts, whichever

may be applicable, shall be deemed to have resigned effective as of the end of the day on which he last performed any of the duties of his position; provided, however, an officer or employee shall not be deemed to have so resigned if he resumes the performance of his regularly assigned duties at the commencement of his next regular working day or on-duty shift following the expiration of the aforementioned period of absence or failure to discharge duties.

"Within twenty (20) calendar days after the effective date of such resignation, any officer or employee who has resigned pursuant to this subsection (a) may file with his appointing officer a written request for reinstatement. The appointing officer may reinstate such officer or employee if such appointing officer finds that there is good cause for the absence or failure to perform duties such as bona fide illness, injury, or similar circumstances beyond the control of the officer or employee, and that such officer or employee is ready and able to resume the discharge of his duties. In the event an individual is so reinstated, such reinstatement shall constitute a retroactive leave of absence.

"This subsection (a) does not apply to an elective officer or department head.

"(b) An elective officer or officer appointed by the Board may resign by resignation in writing to the Board and filed with the Executive Officer-Clerk thereof. Such resignation shall be effective on the date designated therein.

"(c) Any other officer or employee may resign by tendering his resignation in writing to his appointing officer. Such resignation shall be effective on the date designated therein, and if no date is so designated it shall be effective immediately."

STATEMENT OF THE CASE

Appellant was employed in the office of the Los Angeles County Assessor as an Appraiser II. On July 5, 1977, he notified his regional office by telephone that he would not be able to come to work that day because of a stomach illness. After that date, he did not again report to work or contact his employer to request further authorized absence.

On July 15, 1977, the personnel officer of the Assessor's office wrote to appellant, seeking to verify that his continued absence from duty was due to illness; to ascertain the date on which he might return to work; and to inform him of the need, upon his return to duty, to present a medical clearance from the Occupational Health Service of the County's Department of Personnel.

Appellant admits receiving that letter, but he did not respond to it.

More than one month later, on August 17, 1977, the personnel officer, by certified mail, notified appellant that he would be deemed absent without leave on and after August 23, 1977, if he did not, by then, furnish the Assessor's office with a statement from his physician as to the nature of his illness and the date of his expected return to work. The letter also asked that a copy of that statement be sent to the Occupational Health Service for purposes of medical reevaluation in accordance with a County ordinance. Appellant denies receiving that letter.

Not having heard from appellant by August 25, 1977, the Assessor's personnel officer again wrote to him, this time by regular, as well as certified mail. The August 25 letter notified appellant that he was deemed absent without leave, and reiterated the previous request for a physician's statement in duplicate. Copies of prior correspondence were attached. Appellant does not deny those letters.

On August 30, 1977, the personnel officer again wrote to appellant, by both regular and certified mail, that if he did not submit a physician's statement by September 6, 1977, he would be deemed, under Section 33 of the Los Angeles County Administrative Code, to have impliedly resigned his employment. Copies of previous letters were again attached. Appellant must have received that correspondence, because he appears to have filed a physician's statement in early

September with the Occupational Health Service, though not with the Assessor's office.

On September 6, 1977, still not having heard from appellant for the past two months, the personnel officer notified him by regular and certified mail, that he was deemed to have impliedly resigned; and that, in order to be reinstated as an employee of the Assessor, he would have to show good cause, within twenty days, for his unauthorized absence. Appellant apparently received that letter, but made no timely request to the Assessor's office for reinstatement.

After writing to both the County Counsel and respondent, requesting that each of them compel the Assessor to reinstate him as an employee, appellant finally, on October 31, 1977, requested a hearing before respondent on his implied resignation. At respondent's suggestion, he withdrew the request without prejudice, on December 21, 1977, to request reinstatement from the Assessor's office. He wrote to the Director of Real Property Appraisals asking to be reinstated, but offering no explanation for his unauthorized absence, his failure to answer correspondence or his late reinstatement request. When the Director of Real Property Appraisals wrote back questioning these matters, appellant, through his attorney, responded refusing to provide any explanation and demanding that his request either be accepted or refused. It was refused on January 31, 1978.

On June 21, 1978, respondent denied appellant's request for a hearing.

The foregoing were the facts found by the California Superior Court in denying appellant's petition for a writ of mandamus on December 7, 1978.

The California Court of Appeal affirmed that decision on December 4, 1979; and the California Supreme Court denied appellant's petition for hearing on January 30, 1980.

ARGUMENT: REASONS FOR DENYING THE WRIT

Aside from appellant's own bare assertion, there is no evidence in the record to support his charge of racial discrimination.

Because this is a civil action, the constitutional prohibition of cruel and unusual punishment does not apply.

Appellant's remaining arguments attack the constitutionality of Section 33 of the Los Angeles County Administrative Code (quoted above) both generally and as applied to himself. The two grounds of challenge are that the ordinance section allows permanent County employees' jobs to be terminated without cause, and that it denies them a hearing.

Respondent submits that just cause for termination of employment is specified in the section, itself -- i.e., unauthorized absence or failure to perform duties for three consecutive

days or two consecutive, regularly-scheduled work shifts. In appellant's case, the period of absence stretched to two months. No federal constitutional or statutory provision mandates that a government retain on its payroll employees who will not work or who have abandoned their jobs. If illness prevents them from working, it is only reasonable to expect them to communicate that information to their employer, as appellant was repeatedly urged to do.

As far as the right to a hearing is concerned, Section 33 also establishes a procedure for reinstatement within twenty days for good cause. Appellant, who refused to exhaust that procedure, fails to explain how any earlier "hearing" can be held when an employee is absent, incommunicado or both.

CONCLUSION

Because appellant's contentions are so utterly devoid of substance, they furnish no basis for granting his petition. Therefore, the writ sought should be denied.

Respectfully submitted,

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